



Governmental Operations Committee

**Wednesday, January 25, 2006
1:30 – 3:30 PM
Morris Hall**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Governmental Operations Committee

Start Date and Time: Wednesday, January 25, 2006 01:30 pm

End Date and Time: Wednesday, January 25, 2006 03:30 pm

Location: Morris Hall (17 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 105 Retiree Health Insurance Subsidy by Allen
HB 405 Deferred Compensation Programs by Mealor

Consideration of the following proposed committee bill(s):

PCB GO 06-05 -- OGSR Security System Plans
PCB GO 06-10 -- OGSR Motor Vehicle Crash Reports
PCB GO 06-11 -- OGSR Medical Facility Information
PCB GO 06-12 -- OGSR Comprehensive Emergency Management Plans
PCB GO 06-13 -- OGSR Long-term Care Facilities
PCB GO 06-14 -- OGSR Total Maximum Daily Loads

Update on PeoplesFirst

NOTICE FINALIZED on 01/13/2006 14:39 by TUCK.SHIRLEY

BILL #: HB 105 Retiree Health Insurance Subsidy
SPONSOR(S): Allen and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 442

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families--This bill provides additional funds to retirees and certain spouses and beneficiaries to enable them to purchase health insurance.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The purpose of the retiree health insurance subsidy program is to assist retired members of state-administered retirement systems in paying the costs of health insurance.¹ Currently, the law provides that eligible retirees and beneficiaries receive a monthly benefit of \$5 per year of creditable service, with a minimum benefit of \$30 and a maximum benefit of \$150. The Legislature last increased this benefit in 1999. Contributions from Florida Retirement System employers of 1.11 percent for current employees' gross compensation per pay period currently fund the benefit. If this funding is insufficient to pay full benefits to all participants, section 112.363(5), Florida Statutes, provides that "the benefits may be reduced or canceled at any time."

The monthly amount paid by retirees for health insurance under the State Group Health Insurance Program varies depending on the coverage selected, but ranged from about \$197 for a Medicare-eligible retiree electing single coverage to about \$841 for a non-Medicare eligible retiree electing family coverage in 2005.² However, retirees receiving the health insurance subsidy are not required to purchase health insurance through the State Group Health Insurance Program. As of January 2005, of the approximately 60,000 state retirees, roughly 30,000 have their health insurance premium deducted from their retirement benefit.

The Florida Retirement System covers not only state agencies, but also counties, including school boards; special districts; and those municipalities that have chosen to participate. There are a few other state-administered retirement systems that are no longer covering new members but have retired members receiving this benefit.

Proposed Changes

HB 105 increases the health insurance subsidy received by eligible retirees under the Florida Retirement System's defined benefit and contribution plans from \$5 per month for each year of creditable service to \$6 per month for such service, effective January 1, 2007, and from \$6 to \$7 per month, effective January 1, 2008. The bill changes the minimum amount received from \$30 to \$36 (a \$6 monthly increase) and the maximum from \$150 to \$180 (a \$30 monthly increase), effective January 1, 2007, and further increases the minimum and maximum allowable payments to \$42 and \$210, respectively, on January 1, 2008; however, the bill grandfathers in beneficiaries whose benefit would otherwise be reduced.

To fund the increased benefit, the bill increases the contribution paid by employers from 1.11 percent of gross compensation per pay period to 1.22 percent effective July 1, 2006, and to 1.66 percent on July 1, 2007.

¹ Fla. Stat. § 112.363(1) (2005)

² Div. of State Group Ins., Dep't of Mgmt. Serv. (2005).

C. SECTION DIRECTORY:

- Section 1: Amends section 112.363, Florida Statutes, to provide for increases in the health insurance subsidy.
- Section 2: Sets forth a legislative finding that this act fulfills an important state interest.
- Section 3: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify or eliminate a state revenue source.

2. Expenditures:

The Department of Management Services estimates that HB 105 will result in increased expenditures of \$6 million in FY 2006-2007, \$31.3 million in FY 2007-2008, and \$32.6 million in FY 2008-2009 for state government.³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify or eliminate a local revenue source.

2. Expenditures:

The Department of Management Services estimates that HB 105 will result in increased expenditures of \$21.5 million in FY 2006-2007, \$111.6 million in FY 2007-2008, and \$116 million in FY 2008-2009 for local governments that participate in the Florida Retirement System.⁴

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will increase the state subsidy to help certain retirees covered under the Florida Retirement System pay for health insurance.

D. FISCAL COMMENTS:

Employer Contribution Rate

The Department of Management Services has indicated that the expenditures required by HB 105, along with a six month reserve through 2012, could be achieved with a 1.58% employer contribution rate beginning July 1, 2007, rather than the 1.66% employer contribution rate provided by the bill.

Reserve

The Department of Management Services noted the following fiscal impact regarding reserves:

A reserve of at least 6 months is important to give sufficient time to notify the Legislature of any inability to continue to pay Health Insurance Subsidy (HIS) benefits at the current level so they may act if HIS contribution rates must be increased. If additional funding is not available, HIS benefits must be reduced or curtailed. The Department would have time to notify affected HIS

³ Fla. Dep't of Mgmt. Serv., HB 105 (2006) Staff Analysis (Jan. 11, 2006) (on file with dep't).

⁴ *Id.*

recipients. If HB 105 is enacted, the fund's reserve would dip initially to 6.3 months in January 2007, from December 2005's reserve of 7.0 months. However, if current retirement trends continue, the increase in the HIS contribution rate in the 6 months prior to the initial benefit increase and the second rate increase effective July 1, 2006, contributes to keeping the reserve in the 8 to 9-month range through at least June 2012.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to meet the criteria for a mandate under the provisions of section 18(a), article VII, of the State Constitution. The bill results in an increase in expenditures by those local governments which are compulsory members of the Florida Retirement System. However, the bill appears to meet the requirements for effectively binding affected counties and municipalities by containing the required statement regarding the bill's fulfilling an important state interest and applying to all persons similarly situated.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

At lines 39-42 and 83-86, the bill provides: "The health insurance subsidy amount payable to any person receiving the retiree health insurance subsidy payment on January 1, 2006, may not be reduced solely by operation of this paragraph." The Department of Management Services has indicated that changing this date to December 31, 2006 would better correspond with the first benefit increase proposed by the bill.⁵

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

⁵ *Id.*

1 A bill to be entitled

2 An act relating to retiree health insurance subsidy;
3 amending s. 112.363, F.S.; revising provisions for
4 determination of the amount of the subsidy for retirees of
5 the defined benefit program and eligible participants of
6 the Public Employee Optional Retirement Program of the
7 Florida Retirement System or their beneficiaries;
8 providing that the spouse at the time of a Florida
9 Retirement System participant's death is considered the
10 beneficiary for purposes of the retiree health insurance
11 subsidy unless a different beneficiary has been
12 designated; revising the contribution paid by employers of
13 state-administered retirement plans; providing a finding
14 of important state interest; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraphs (f) and (g) are added to subsection
19 (3) of section 112.363, Florida Statutes, and paragraphs (g) and
20 (h) are added to subsection (8) of that section, to read:

21 112.363 Retiree health insurance subsidy.--

22 (3) RETIREE HEALTH INSURANCE SUBSIDY AMOUNT.--

23 (f)1. Beginning January 1, 2007, each eligible retiree of
24 the defined benefit program of the Florida Retirement System or,
25 if the retiree is deceased, his or her beneficiary who is
26 receiving a monthly benefit from such retiree's account and who
27 is a spouse or a person who meets the definition of a joint
28 annuitant in s. 121.021 shall receive a monthly retiree health

29 insurance subsidy payment equal to the number of years of
30 creditable service, as defined in s. 121.021, completed at the
31 time of retirement multiplied by \$6; however, an eligible
32 retiree or beneficiary may not receive a subsidy payment of more
33 than \$180 or less than \$36. If there are multiple beneficiaries,
34 the total payment must not be greater than the payment to which
35 the retiree was entitled. Notwithstanding any other provision in
36 this section, the spouse at the time of death shall be the
37 participant's beneficiary unless such participant has designated
38 a different beneficiary subsequent to the participant's most
39 recent marriage. The health insurance subsidy amount payable to
40 any person receiving the retiree health insurance subsidy
41 payment on January 1, 2006, may not be reduced solely by
42 operation of this subparagraph.

43 2. Beginning January 1, 2007, each eligible participant of
44 the Public Employee Optional Retirement Program of the Florida
45 Retirement System who has met the requirements of this section
46 or, if the participant is deceased, his or her spouse who is the
47 participant's designated beneficiary shall receive a monthly
48 retiree health insurance subsidy equal to the number of years of
49 creditable service, as provided in this subparagraph, completed
50 at the time of retirement multiplied by \$6; however, an eligible
51 retiree or beneficiary may not receive a subsidy payment of more
52 than \$180 or less than \$36. For purposes of determining a
53 participant's creditable service used to calculate the health
54 insurance subsidy, a participant's years of service credit or
55 fraction thereof shall be based on the participant's work year
56 as defined in s. 121.021. Credit shall be awarded for a full

57 work year whenever health insurance subsidy contributions have
58 been made as required by law for each month in the participant's
59 work year. In addition, all years of creditable service retained
60 under the Florida Retirement System defined benefit program
61 shall be included as creditable service for purposes of this
62 section. Notwithstanding any other provision in this section,
63 the spouse at the time of death shall be the participant's
64 beneficiary unless such participant has designated a different
65 beneficiary subsequent to the participant's most recent
66 marriage.

67 (g)1. Beginning January 1, 2008, each eligible retiree of
68 the defined benefit program of the Florida Retirement System or,
69 if the retiree is deceased, his or her beneficiary who is
70 receiving a monthly benefit from such retiree's account and who
71 is a spouse or a person who meets the definition of a joint
72 annuitant in s. 121.021 shall receive a monthly retiree health
73 insurance subsidy payment equal to the number of years of
74 creditable service, as defined in s. 121.021, completed at the
75 time of retirement multiplied by \$7; however, an eligible
76 retiree or beneficiary may not receive a subsidy payment of more
77 than \$210 or less than \$42. If there are multiple beneficiaries,
78 the total payment must not be greater than the payment to which
79 the retiree was entitled. Notwithstanding any other provision in
80 this section, the spouse at the time of death shall be the
81 participant's beneficiary unless such participant has designated
82 a different beneficiary subsequent to the participant's most
83 recent marriage. The health insurance subsidy amount payable to
84 any person receiving the retiree health insurance subsidy

85 payment on January 1, 2006, may not be reduced solely by
86 operation of this subparagraph.

87 2. Beginning January 1, 2008, each eligible participant of
88 the Public Employee Optional Retirement Program of the Florida
89 Retirement System who has met the requirements of this section
90 or, if the participant is deceased, his or her spouse who is the
91 participant's designated beneficiary shall receive a monthly
92 retiree health insurance subsidy equal to the number of years of
93 creditable service, as provided in this subparagraph, completed
94 at the time of retirement multiplied by \$7; however, an eligible
95 retiree or beneficiary may not receive a subsidy payment of more
96 than \$210 or less than \$42. For purposes of determining a
97 participant's creditable service used to calculate the health
98 insurance subsidy, a participant's years of service credit or
99 fraction thereof shall be based on the participant's work year
100 as defined in s. 121.021. Credit shall be awarded for a full
101 work year whenever health insurance subsidy contributions have
102 been made as required by law for each month in the participant's
103 work year. In addition, all years of creditable service retained
104 under the Florida Retirement System defined benefit program
105 shall be included as creditable service for purposes of this
106 section. Notwithstanding any other provision in this section,
107 the spouse at the time of death shall be the participant's
108 beneficiary unless such participant has designated a different
109 beneficiary subsequent to the participant's most recent
110 marriage.

111 (8) CONTRIBUTIONS.--For purposes of funding the insurance
112 subsidy provided by this section:

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113 (g) Beginning July 1, 2006, the employer of each member of
114 a state-administered retirement plan shall contribute 1.22
115 percent of gross compensation each pay period.

116 (h) Beginning July 1, 2007, the employer of each member of
117 a state-administered retirement plan shall contribute 1.66
118 percent of gross compensation each pay period.

119
120 Such contributions shall be submitted to the Department of
121 Management Services and deposited in the Retiree Health
122 Insurance Subsidy Trust Fund.

123 Section 2. The Legislature finds that a proper and
124 legitimate state purpose is served when employees and retirees
125 of the state and of its political subdivisions, and the
126 dependents, survivors, and beneficiaries of such employees and
127 retirees, are extended the basic protections afforded by
128 governmental retirement systems that provide fair and adequate
129 benefits that are managed, administered, and funded in an
130 actuarially sound manner, as required by s. 14, Art. X of the
131 State Constitution and part VII of chapter 112, Florida
132 Statutes. Therefore, the Legislature determines and declares
133 that this act fulfills an important state interest.

134 Section 3. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 105**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Governmental Operations
Representative(s) Allen offered the following:

Amendment

Remove line(s) 113-118 and insert:

(g) Beginning January 1, 2007, the employer of each member
of a state-administered retirement plan shall contribute 1.75
percent of gross compensation each pay period.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS



BILL #: HB 405

Deferred Compensation Programs

SPONSOR(S): Meador

TIED BILLS:

IDEN./SIM. BILLS: SB 1024

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	_____	Mitchell 	Williamson 
2) <u>Local Government Council</u>	_____	_____	_____
3) <u>Fiscal Council</u>	_____	_____	_____
4) <u>State Administration Council</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 405 removes restrictions in statute that limit participation in the Government Employees Deferred Compensation Plan to "state employees." The bill permits participation in the deferred compensation plan established by the Chief Financial Officer, with the approval of the State Board of Administration, by "employees of governmental entities" rather than only "state employees."

The bill creates two new options for counties, municipalities, other political subdivisions, or constitutional officers in addition to adopting and establishing their own deferred compensation program: (1) allowing them to adopt the deferred compensation program of the state; or (2) allowing them to adopt and establish a deferred compensation program and adopt the state's deferred compensation program.

Since the program is funded by charges to participants, there is no fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to affect any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 112.215, Florida Statutes, is the Government Employees' Deferred Compensation Act.¹ This section allows the state or any state agency, county, municipality, other political subdivision, or constitutional county officer to permit any employee to defer all or any portion of that employee's otherwise payable compensation.² Deferred compensation can be placed in a savings account or be used to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness, or other approved investment products.³ Federal taxation is deferred up to an annually indexed amount for placement in a fund or funds of a prequalified investment provider and account earnings are similarly sheltered from federal taxation until a distribution occurs.⁴

The Chief Financial Officer is charged with the responsibility for establishing the deferred compensation plans for state employees and directs the program through the Department of Financial Services (DFS), which acts as the administering agency:

- The DFS competitively selects several investment providers along with a third-party financial administrator;
- The DFS seeks the advice of the State Board of Administration, the investment entity for the State of Florida and the Florida Retirement System, before approving investment vehicles or products; and
- The DFS periodically reviews provider company funds and may terminate them if their performance falls below a designated level.⁵

Five of the six participating firms in the deferred compensation program for state employees are insurance companies; the sixth is a mutual fund.⁶ The participating state employee bears all of the investment risk and is responsible for the payment of associated fees and costs charged by the provider.⁷ The state's fees and associated participant costs, or total investment management expenses, generally fall within a range between institutional, the lowest, and retail, the highest.⁸ The state plan operates under a long-term contract that was last amended in 1997.⁹

Counties, municipalities, and other political subdivisions may adopt and establish their own deferred compensation program.¹⁰ Constitutional county officers also may establish their own deferred compensation program by contractual agreement or through similar approval documentation.¹¹ The

¹ Fla. Stat. § 112.215(1) (2005).

² Fla. Stat. § 112.215(3) (2005).

³ *Id.*

⁴ Fla. H.R. Govtl. Ops. Comm., HB 787 (2005) Staff Analysis 2 (March 30, 2005) (on file with comm.).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Fla. Stat. § 112.215(5) (2005).

¹¹ *Id.*

county, municipality, other political subdivision, or constitutional officers are responsible for the programs which they establish.

Under current law, counties, municipalities, other political subdivisions, or constitutional officers may not participate in the deferred compensation program sponsored by the DFS. Yet, the 2001 Survey of 457 Plans by the National Association of Defined Contribution Administrators indicates that 47% of the 36 responding state plans allow local governments to choose to participate in the state plan.¹² Moreover, according to staff of the Department of Financial Services, Internal Revenue Service regulations permit 457 plans to include multiple jurisdictions.¹³

Proposed Changes

The bill amends section 20.121, Florida Statutes, to remove a restriction which provides that the Government Employees Deferred Compensation Plan is for “state employees.”

The bill also amends section 112.215, Florida Statutes, to change the definition of “employee” to “any person, whether appointed, elected, or under contract, providing services for a governmental entity.” The bill groups the organizations and officers previously included in the definition of “employee” into a new definition of “governmental entity” which means “the state; any state agency or county or other political subdivision of the state; any municipality; any state university board of trustees; or any constitutional county officer under section 1(d), Article VIII of the State Constitution.”

The bill permits participation in the deferred compensation plan established by the Chief Financial Officer, with the approval of the State Board of Administration, by “employees of governmental entities” rather than only “state employees.”

Based on these changes, the bill creates two new options for counties, municipalities, other political subdivisions, or constitutional officers in addition to adopting and establishing their own deferred compensation program: (1) allowing them to adopt the deferred compensation program of the state; or (2) allowing them to adopt and establish a deferred compensation program and adopt the state’s deferred compensation program.

The bill changes the rulemaking authority of the Chief Financial Officer to include “employees of governmental entities” rather than only “state employees.”

C. SECTION DIRECTORY:

Section 1: Amends paragraph (d) of subsection (2) of section 20.121, Florida Statutes, to make conforming changes.

Section 2: Amends subsection (2), paragraphs (a) and (d) of subsection (4), and subsections (5), (6), and (12) of section 112.215, Florida Statutes, to revise definitions and to permit expanded participation in the deferred compensation program of the state.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not appear to create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

¹² Fla. H.R. Govtl. Ops. Comm., *supra* note 4.

¹³ *Id.*

None. This bill does not appear to create, modify, amend, or eliminate a state expenditure because participants would pay all fees.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not appear to create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. This bill does not appear to create, modify, amend, or eliminate a local expenditure because participants would pay all fees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that local governments add the state plan as another option for their employees or drop their vendors and transition to offering solely the state plan, current providers of deferred compensation services to those local governments may lose business, while the providers under the state plan may gain business. However, there is some degree of overlap between vendors in the state and various local government plans.

To the extent that the state plan's fees are lower than the local governments' plans, participants would experience savings.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill might benefit from changing the references to the "deferred program of the state" and "state's deferred compensation program" at lines 75-78 to be more consistent with the language which authorizes the Chief Financial Officer to establish such "plan or plans of deferred compensation for employees of governmental entities" in subsection (4) of section 112.215, Florida Statutes.¹⁴

¹⁴ Although neutral on the bill, this issue was raised by the Florida League of Cities. Telephone Conversation with the Deputy General Counsel of the Florida League of Cities (Jan. 12, 2006).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

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1 A bill to be entitled

2 An act relating to deferred compensation programs;
3 amending s. 20.121, F.S., relating to the Department of
4 Financial Services, to conform; amending s. 112.215, F.S.;
5 revising the term "employee" and defining the term
6 "governmental entity"; authorizing governmental entities,
7 by ordinance, contract agreement, or other documentation,
8 to participate in the deferred compensation plan of the
9 state and specifying responsibility of the Chief Financial
10 Officer with respect thereto; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Paragraph (d) of subsection (2) of section
15 20.121, Florida Statutes, is amended to read:

16 20.121 Department of Financial Services.--There is created
17 a Department of Financial Services.

18 (2) DIVISIONS.--The Department of Financial Services shall
19 consist of the following divisions:

20 (d) The Division of Treasury, which shall include a Bureau
21 of Deferred Compensation responsible for administering the
22 Government Employees Deferred Compensation Plan as provided in
23 ~~established under~~ s. 112.215 ~~for state employees~~.

24 Section 2. Subsection (2), paragraphs (a) and (d) of
25 subsection (4), and subsections (5), (6), and (12) of section
26 112.215, Florida Statutes, are amended to read:

27 112.215 Government employees; deferred compensation
28 program.--

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29 (2)(a) For the purposes of this section, the term
30 "employee" means any person, whether appointed, elected, or
31 under contract, providing services for a governmental entity ~~the~~
32 ~~state; any state agency or county or other political subdivision~~
33 ~~of the state; any municipality; any state university board of~~
34 ~~trustees; or any constitutional county officer under s. 1(d),~~
35 ~~Art. VIII of the State Constitution~~ for which compensation or
36 statutory fees are paid.

37 (b) "Governmental entity" means the state; any state
38 agency or county or other political subdivision of the state;
39 any municipality; any state university board of trustees; or any
40 constitutional county officer under s. 1(d), Art. VIII of the
41 State Constitution.

42 (4)(a) The Chief Financial Officer, with the approval of
43 the State Board of Administration, shall establish such plan or
44 plans of deferred compensation for ~~state~~ employees of
45 governmental entities, including all such investment vehicles or
46 products incident thereto, as may be available through, or
47 offered by, qualified companies or persons, and may approve one
48 or more such plans for implementation by and on behalf of
49 governmental entities ~~the state and their its agencies and~~
50 employees.

51 (d) In accordance with such approved plan, and upon
52 contract or agreement with an eligible employee, deferrals of
53 compensation may be accomplished by payroll deductions made by
54 the appropriate officer or officers of the governmental entity
55 ~~state~~, with such funds being thereafter held and administered in
56 accordance with the plan.

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57 (5) Any county, municipality, or other political
58 subdivision of the state may by ordinance, and any
59 constitutional county officer under s. 1(d), Art. VIII of the
60 State Constitution of 1968 may by contract agreement or other
61 documentation constituting approval, for itself and its
62 employees:

63 (a) Adopt and establish ~~for itself and its employees~~ a
64 deferred compensation program. The ordinance shall designate an
65 appropriate official of the county, municipality, or political
66 subdivision to approve and administer a deferred compensation
67 plan or otherwise provide for such approval and administration.
68 The ordinance shall also designate a public official or body to
69 make the determinations provided for in paragraph (6)(b). If a
70 constitutional county officer elects to adopt and establish for
71 that office and its employees a deferred compensation program,
72 the constitutional county officer shall be the appropriate
73 official to make the determinations provided for in this
74 subsection and in paragraph (6)(b);~~:-~~

75 (b) Adopt the deferred compensation program of the state;
76 or

77 (c) Both adopt and establish a deferred compensation
78 program and adopt the state's deferred compensation program.

79 (6)(a) No deferred compensation plan of the state shall
80 become effective until approved by the State Board of
81 Administration and the Chief Financial Officer is satisfied by
82 opinion from such federal agency or agencies as may be deemed
83 necessary that the compensation deferred thereunder, ~~and/or~~ the
84 investment products purchased pursuant to the plan, or both will

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85 not be included in the employee's taxable income under federal
86 or state law until it is actually received by such employee
87 under the terms of the plan, and that such compensation will
88 nonetheless be deemed compensation at the time of deferral for
89 the purposes of social security coverage, for the purposes of
90 the state retirement system, or ~~and~~ for any other retirement,
91 pension, or benefit program established by law.

92 (b) No deferred compensation plan adopted and established
93 by ~~of~~ a county, municipality, other political subdivision, or
94 constitutional county officer shall become effective until the
95 appropriate official or body designated under subsection (5) is
96 satisfied by opinion from such federal agency or agencies as may
97 be deemed necessary that the compensation deferred thereunder,
98 ~~and/or~~ the investment products purchased pursuant to the plan,
99 or both will not be included in the employee's taxable income
100 under federal or state law until it is actually received by such
101 employee under the terms of the plan, and that such compensation
102 will nonetheless be deemed compensation at the time of deferral
103 for the purposes of social security coverage, for the purposes
104 of the retirement system of the appropriate county,
105 municipality, political subdivision, or constitutional county
106 officer, and for any other retirement, pension, or benefit
107 program established by law.

108 (12) The Chief Financial Officer may adopt any rule
109 necessary to administer and implement this act with respect to
110 deferred compensation plans for ~~state~~ employees of governmental
111 entities that have adopted the state's plan.

112 Section 3. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. HB 405

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Governmental Operations
Representative(s) Mealor offered the following:

Amendment

Remove line(s) 75-78 and insert:

(b) Adopt the plan or plans of deferred compensation for
employees of governmental entities established pursuant to
subsection (4).

(c) Both adopt and establish a deferred compensation
program and adopt the plan or plans of deferred compensation for
employees of governmental entities established pursuant to
subsection (4).

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-05 OGSR Security System Plans
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 696

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Brazzell/Williamson	Williamson <i>Raw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact an exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records and public meetings exemptions regarding security system plans held by an agency for property owned by or leased to the state or its political subdivisions and for privately owned or leased property. The exemptions will repeal on October 2, 2006, if this bill does not become law.

This bill may have a minimal non-recurring positive fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 119.071(3)(a), F.S., provides a public records exemption and s. 286.0113, F.S., provides a related public meetings exemption designed to protect security system plans for property owned by or leased to the state or its political subdivisions and for privately owned or leased property. These provisions were enacted during the 2001 C special session following the September 11, 2001, attacks on the United States.

Section 119.071(3)(a), F.S., makes confidential and exempt¹ such security system plan or portion thereof held by an agency. "Security system plan" includes

[A]ll records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems; threat assessments conducted by any agency or any private entity; threat response plans; emergency evacuation plans; sheltering arrangements; or manuals for security personnel, emergency equipment, or security training.²

Section 286.0113, F.S., provides a public meetings exemption for meetings in which confidential and exempt security system plans or portions thereof would be revealed.

Pursuant to the Open Government Sunset Review Act,³ the exemptions will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal dates, thereby reenacting the public records and public meetings exemptions. It also reorganizes the provisions by relocating the description of a "security system plan" to the beginning of the exemption.

The bill removes the provision requiring an agency with authorized access to such plans to maintain the confidential and exempt status of those plans. In *City of Riviera Beach v. Barfield*,⁴ the court held that "when a criminal justice agency transfers exempt criminal investigative information to another criminal justice agency, the information retains its exempt status."⁵ As such, the provision is unnecessary and has been removed.

¹ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

² Section 119.071(3)(a), F.S.

³ Section 119.15, F.S.

⁴ 642 So. 2d 1135 (Fla. 4th DCA 1994), review denied, 651 So. 2d 1192 (Fla. 1995)

⁵ *Government-In-The-Sunshine Manual 2005 Edition*, prepared by the Office of the Attorney General and the First Amendment Foundation, vol. 27, at 118.

Finally, the bill makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071(3)(a), F.S., to remove the repeal date.

Section 2 amends s. 286.0113, F.S., to remove the repeal date.

Section 3 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state and local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state and local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

On lines 55 and 57, the bill refers to a “custodian.” The Public Records Act⁶ provides for a “custodian of public records.” As such, an amendment is needed to clarify that the section is referring to a “custodian of public records” in order to conform to the title provided in the Act.

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

⁶ Chapter 119, F.S.

BILL

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A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding security system plans;
amending s. 119.071(3)(a), F.S.; reorganizing the
paragraph; making editorial changes; removing superfluous
language; deleting the provision that provides for the
repeal of the public records exemption under the Open
Government Sunset Review Act; amending s. 286.0113, F.S.;
making editorial changes; deleting the provision that
provides for the repeal of the public meetings exemption
under the Open Government Sunset Review Act; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section
119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of
public records.--

(3) SECURITY.--

(a)1. As used in this paragraph, the term a "security
system plan" includes all:

a. Records, information, photographs, audio and visual
presentations, schematic diagrams, surveys, recommendations, or
consultations or portions thereof relating directly to the
physical security of the facility or revealing security systems;

b. Threat assessments conducted by any agency or any
private entity;

c. Threat response plans;

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d. Emergency evacuation plans;
e. Sheltering arrangements; or
f. Manuals for security personnel, emergency equipment, or
security training.

2. A security system plan or portion thereof for:

a.1. Any property owned by or leased to the state or any of
its political subdivisions; or

b.2. Any privately owned or leased property

~~which plan or portion thereof is held by an any agency is~~
confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of
the State Constitution. ~~As used in this paragraph, the term a~~
~~"security system plan" includes all records, information,~~
~~photographs, audio and visual presentations, schematic diagrams,~~
~~surveys, recommendations, or consultations or portions thereof~~
~~relating directly to the physical security of the facility or~~
~~revealing security systems; threat assessments conducted by any~~
~~agency or any private entity; threat response plans; emergency~~
~~evacuation plans; sheltering arrangements; or manuals for~~
~~security personnel, emergency equipment, or security training.~~
This exemption is remedial in nature and it is the intent of the
Legislature that this exemption apply ~~be applied~~ to security
system plans held by an agency before, on, or after the effective
date of this paragraph.

3. Information made confidential and exempt by this
paragraph may be disclosed by the custodian ~~custodial agency~~ to:

a. The property owner or leaseholder; or

b. Such information may be disclosed by the custodian
~~custodial agency~~ to another state or federal agency to prevent,

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detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts, ~~and the confidential and exempt status of such information shall be retained while in the possession of the receiving agency. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Section 286.0113, Florida Statutes, is amended to read:

286.0113 General exemptions from public meetings.—That ~~portion~~ Those portions of a any meeting that ~~which~~ would reveal a security system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is ~~are~~ exempt from ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution. ~~This section is subject to the Open Government Sunset Review Act, in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 3. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-10 OGSR Motor Vehicle Crash Reports
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>haw</i>	Williamson <i>haw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for motor vehicle crash reports. Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning parties involved in a crash are confidential and exempt for a period of 60 days. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state and local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law requires a law enforcement officer to file a written report for a motor vehicle crash if the crash:

- Resulted in death or personal injury;
- Resulted in damage to a vehicle or other property; or
- Rendered the vehicle inoperative and required a wrecker to remove it from traffic.¹

The driver of the vehicle is required to file a written report if a law enforcement officer does not do so.² Supplemental written reports also might be required.³ A driver failing to file the appropriate reports commits a noncriminal traffic infraction that is punishable as a nonmoving violation as provided in chapter 318, F.S. (\$30 penalty).⁴

Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning parties involved in a crash are confidential and exempt⁵ for a period of 60 days after the date the report is filed.⁶ Such reports are immediately available to:

- The party involved in the crash and his or her legal representative, licensed insurance agent, insurer, or person under contract with such insurer to provide claims or underwriting information;
- Prosecutorial authorities;
- Victim services programs;
- Radio and television stations licensed by the Federal Communications Commission;
- Newspapers qualified to publish legal notices;
- Free newspapers of general circulation;⁷ and
- Any local, state, or federal agency.⁸

A person with immediate access to confidential and exempt information contained in such reports must present a valid driver's license or other photo identification, proof of status, or identification that demonstrates his or her qualifications to access such reports. The person also must file a written

¹ Section 316.066(3)(a), F.S.

² Section 316.066(1), F.S.

³ Section 316.066(2), F.S.

⁴ Section 316.066(6), F.S.

⁵ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁶ Section 316.066(3)(c), F.S.

⁷ The following are not newspapers for purposes of the exemption: newspapers intended for members of a particular profession or occupational group; newspapers with the primary purpose of distributing advertising; and newspapers with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes. *Id.*

⁸ *Id.*

sworn statement⁹ with the custodian of such reports attesting that the confidential and exempt information will not be used for commercial solicitation¹⁰ of accident victims or knowingly disclosed to any third party for the purpose of solicitation, during the 60 day period.¹¹

The following persons are guilty of a felony of the third degree¹² for violating the provisions of the exemption:

- An agency employee who willfully and knowingly discloses the confidential and exempt information to an unauthorized person;¹³
- A person without authorized access to such information and who obtains or attempts to obtain the information;¹⁴ and
- A person who uses such information in violation of the sworn statement.¹⁵

Pursuant to the Open Government Sunset Review Act,¹⁶ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It makes editorial and conforming changes and reorganizes the section.

The bill removes the provision requiring an agency with authorized access to the confidential and exempt information contained in a crash report to maintain the confidential and exempt status of that information. In *City of Riviera Beach v. Barfield*,¹⁷ the court held that "when a criminal justice agency transfers exempt criminal investigative information to another criminal justice agency, the information retains its exempt status."¹⁸ As such, the provision is unnecessary and has been removed.

C. SECTION DIRECTORY:

Section 1 amends s. 316.066, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

⁹ In lieu of the written sworn statement, the custodial agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers provided the contract states the confidential and exempt information will not be used for commercial solicitation. *Id.*

¹⁰ Commercial solicitation does not include the use of a crash report for purposes of publication in a newspaper or a radio or television broadcast. Section 316.066(4), F.S.

¹¹ Section 316.066(3)(c), F.S.

¹² A felony of the third degree is punishable by a term of imprisonment not exceeding five years (s. 775.082(3)(d), F.S.) and a fine not exceeding \$5,000 (s. 775.083(1)(c), F.S.)

¹³ Section 316.066(3)(d), F.S.

¹⁴ Section 316.066(3)(e), F.S.

¹⁵ Section 316.066(3)(f), F.S.

¹⁶ Section 119.15, F.S.

¹⁷ 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995)

¹⁸ *Government-In-The-Sunshine Manual 2005 Edition*, prepared by the Office of the Attorney General and the First Amendment Foundation, vol. 27, at 118.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state and local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state and local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

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YEAR

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding motor vehicle crash reports;
amending s. 316.066, F.S.; reorganizing the section;
making editorial changes; removing superfluous language;
making conforming changes; deleting the provision that
provides for repeal of the exemption under the Open
Government Sunset Review Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 316.066, Florida Statutes, is amended to
read:

316.066 Written reports of crashes.--

(1) The driver of a vehicle which is in any manner involved
in a crash resulting in bodily injury to or death of any person
or damage to any vehicle or other property in an apparent amount
of at least \$500 shall, within 10 days after the crash, forward a
written report of such crash to the department or traffic records
center. However, when the investigating officer has made a
written report of the crash pursuant to subsection ~~paragraph~~
(3)~~(a)~~, no written report need be forwarded to the department or
traffic records center by the driver.

(2) The receiving entity may require any driver of a
vehicle involved in a crash of which a written report must be
made as provided in this section to file supplemental written
reports whenever the original report is insufficient in the
opinion of the department and may require witnesses of crashes to
render reports to the department.

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(3) (a) Every law enforcement officer who in the regular course of duty investigates a motor vehicle crash:

1. Which crash resulted in death or personal injury shall, within 10 days after completing the investigation, forward a written report of the crash to the department or traffic records center.

2. Which crash involved a violation of s. 316.061(1) or s. 316.193 shall, within 10 days after completing the investigation, forward a written report of the crash to the department or traffic records center.

3. In which crash a vehicle was rendered inoperative to a degree which required a wrecker to remove it from traffic may, within 10 days after completing the investigation, forward a written report of the crash to the department or traffic records center if such action is appropriate, in the officer's discretion.

(b) ~~However,~~ In every case in which a crash report is required by this section and a written report to a law enforcement officer is not prepared, the law enforcement officer shall provide each party involved in the crash a short-form report, prescribed by the state, to be completed by the party. The short-form report must include, ~~but is not limited to:~~

1. The date, time, and location of the crash;
2. A description of the vehicles involved;
3. The names and addresses of the parties involved;
4. The names and addresses of witnesses;
5. The name, badge number, and law enforcement agency of the officer investigating the crash; and

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58 6. The names of the insurance companies for the respective
59 parties involved in the crash.

60 (c) Each party to the crash shall provide the law
61 enforcement officer with proof of insurance to be included in the
62 crash report. If a law enforcement officer submits a report on
63 the accident, proof of insurance must be provided to the officer
64 by each party involved in the crash. Any party who fails to
65 provide the required information is guilty of an infraction for a
66 nonmoving violation, punishable as provided in chapter 318 unless
67 the officer determines that due to injuries or other special
68 circumstances such insurance information cannot be provided
69 immediately. If the person provides the law enforcement agency,
70 within 24 hours after the crash, proof of insurance that was
71 valid at the time of the crash, the law enforcement agency may
72 void the citation.

73 (4) (a) ~~(b)~~ One or more counties may enter into an agreement
74 with the appropriate state agency to be certified by the agency
75 to have a traffic records center for the purpose of tabulating
76 and analyzing countywide traffic crash reports. The agreement
77 must include: certification by the agency that the center has
78 adequate auditing and monitoring mechanisms in place to ensure
79 the quality and accuracy of the data; the time period in which
80 the traffic records center must report crash data to the agency;
81 and the medium in which the traffic records must be submitted to
82 the agency.

83 (b) In the case of a county or multicounty area that has a
84 certified central traffic records center, a law enforcement
85 agency or driver must submit to the center within the time limit
86 prescribed in this section a written report of the crash. A

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driver who is required to file a crash report must be notified of the proper place to submit the completed report.

(c) Fees for copies of public records provided by a certified traffic records center shall be charged and collected as follows:

For a crash report....\$2 per copy.

For a homicide report....\$25 per copy.

For a uniform traffic citation....\$0.50 per copy.

The fees collected for copies of the public records provided by a certified traffic records center shall be used to fund the center or otherwise as designated by the county or counties participating in the center.

(5) (a) (e) Crash reports that ~~required by this section which~~ reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that ~~which~~ are held ~~received or prepared~~ by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

(b) ~~However,~~ Such reports may be made immediately available to the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, victim

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services programs, radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news. For the purposes of this section, the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes.

(c) Any local, state, or federal agency, ~~victim services program, agent, or employee~~ that is authorized to have access to such reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties ~~notwithstanding the provisions of this paragraph. Any local, state, or federal agency, agent, or employee receiving such crash reports shall maintain the confidential and exempt status of those reports and shall not disclose such crash reports to any person or entity.~~

(d) As a condition precedent to accessing a crash report within 60 days after the date the report is filed, a person must present a valid driver's license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access that information, and file a written sworn statement with the state or local agency in possession of the information stating that

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information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt. In lieu of requiring the written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status.

(e) This subsection does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information pursuant to this section. ~~A law enforcement officer as defined in s. 943.10(1) may enforce this subsection. This exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(6)1.(d) Any driver failing to file the written report required under subsection (1) or subsection (2) commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

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174 2. Any employee of a state or local agency in possession
175 of information made confidential and exempt by this section who
176 knowingly discloses such confidential information to a person not
177 entitled to access such information under this section is guilty
178 of a felony of the third degree, punishable as provided in s.
179 775.082, s. 775.083, or s. 775.084.

180 3.~~(e)~~ Any person, knowing that he or she is not entitled to
181 obtain information made confidential and exempt by this section,
182 who obtains or attempts to obtain such information is guilty of a
183 felony of the third degree, punishable as provided in s. 775.082,
184 s. 775.083, or s. 775.084.

185 4.~~(f)~~ Any person who knowingly uses confidential and exempt
186 information in violation of a filed written sworn statement or
187 contractual agreement required by this section commits a felony
188 of the third degree, punishable as provided in s. 775.082, s.
189 775.083, or s. 775.084.

190 (7)~~(4)~~ Except as specified in this subsection, each crash
191 report made by a person involved in a crash and any statement
192 made by such person to a law enforcement officer for the purpose
193 of completing a crash report required by this section shall be
194 without prejudice to the individual so reporting. No such report
195 or statement shall be used as evidence in any trial, civil or
196 criminal. However, subject to the applicable rules of evidence, a
197 law enforcement officer at a criminal trial may testify as to any
198 statement made to the officer by the person involved in the crash
199 if that person's privilege against self-incrimination is not
200 violated. The results of breath, urine, and blood tests
201 administered as provided in s. 316.1932 or s. 316.1933 are not
202 confidential and shall be admissible into evidence in accordance

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with the provisions of s. 316.1934(2). Crash reports made by persons involved in crashes shall not be used for commercial solicitation purposes; however, the use of a crash report for purposes of publication in a newspaper or other news periodical or a radio or television broadcast shall not be construed as "commercial purpose."

(8) A law enforcement officer as defined in s. 943.10(1) may enforce this section.

~~(5) For purposes of this section, a written report includes a report generated by a law enforcement agency through the use of a computer.~~

~~(6) Any driver failing to file the written report required under subsection (1) or subsection (2) commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.~~

Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-11 OGSR Medical Facility Information
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Brazzell/Williamson	Williamson <i>haw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for information concerning the ability of a medical facility, storage facility, or laboratory to defend against an act of terrorism. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 381.95, F.S., provides a public records exemption for certain information concerning medical facilities, storage facilities, and laboratories maintained by the Department of Health as part of the state's plan to defend against terrorism. Information specifically made exempt¹ includes information that identifies or describes the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities for certain individual medical facilities, storage facilities, or laboratories to defend against an act of terrorism. The exemption was enacted in the 2001 C special session following the September 11, 2001, attacks on the United States.

Pursuant to the Open Government Sunset Review Act,² the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It makes editorial changes and reorganizes the section.

The bill removes the provision requiring an agency with authorized access to such information to maintain the exempt status of that information. In *City of Riviera Beach v. Barfield*,³ the court held that "when a criminal justice agency transfers exempt criminal investigative information to another criminal justice agency, the information retains its exempt status."⁴ As such, the provision is unnecessary and has been removed.

C. SECTION DIRECTORY:

Section 1 amends s. 381.95, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record may not be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

² Section 119.15, F.S.

³ 642 So. 2d 1135 (Fla. 4th DCA 1994), review denied, 651 So. 2d 1192 (Fla. 1995)

⁴ *Government-In-The-Sunshine Manual 2005 Edition*, prepared by the Office of the Attorney General and the First Amendment Foundation, vol. 27, at 118.

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding medical facility terrorism
response information; amending s. 381.95, F.S.; making
editorial changes; reorganizing the section; deleting the
provision that provides for the repeal of the exemption
under the Open Government Sunset Review Act; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 381.95, Florida Statutes, is amended to
read:

381.95 Medical facility information maintained for
terrorism response purposes; confidentiality.--

(1) Any information identifying or describing the name,
location, pharmaceutical cache, contents, capacity, equipment,
physical features, or capabilities of individual medical
facilities, storage facilities, or laboratories established,
maintained, or regulated by the Department of Health as part of
the state's plan to defend against an act of terrorism as defined
in s. 775.30 is exempt from ~~the requirements of s. 119.07(1) and~~
~~s. 24(a), Art. I of the State Constitution. The certification by~~
~~the Governor of the sufficiency of any location, pharmaceutical~~
~~cache, contents, capacity, equipment, physical features, or~~
~~capabilities of individual medical facilities, storage~~
~~facilities, or laboratories established, maintained, or regulated~~
~~by the Department of Health as part of the state's plan to defend~~
~~against an act of terrorism is a public record. This exemption is~~

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remedial in nature, and it is the intent of the Legislature that this exemption apply ~~be applied~~ to information held ~~received~~ by the Department of Health before, on, or after the effective date of this section.

(2) Information made exempt by this section may be disclosed by the custodial agency to another state or federal agency in order to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those responsible for such attempts or acts, ~~and the exempt status of such information shall be retained while in the possession of the receiving agency. This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(3) The certification by the Governor of the sufficiency of any location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by the Department of Health as part of the state's plan to defend against an act of terrorism is a public record.

Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-12 OGSR Comprehensive Emergency Management Plans
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Brazzell/Williamson	Williamson <i>hww</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact an exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemptions provided for portions of a comprehensive emergency management plan addressing a public or private hospital's response to an act of terrorism. It also reenacts the public meetings exemption for those portions of meetings wherein such confidential and exempt plan is discussed. The exemptions will repeal on October 2, 2006, if this bill does not become law.

The bill appears to have a minimal non-recurring positive fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 395.1056, F.S., provides public records and public meetings exemptions regarding emergency management plans. The exemptions were enacted during the 2001 C special session following the September 11, 2001, attacks on the United States.

Public Records Exemptions

Portions of a comprehensive emergency management plan that address a public or private hospital's response to an act of terrorism, held by the Agency for Health Care Administration, a state or local law enforcement agency, a local government emergency management agency, the Executive Office of the Governor, the Department of Health, or the Department of Community Affairs, is confidential and exempt¹ from public records requirements.² Portions of a comprehensive emergency management plan that address a public hospital's response to an act of terrorism held by that public hospital is confidential and exempt from public disclosure.³

Portions of an emergency management plan that address a hospital's response to terrorism include

[S]ecurity systems or plans; vulnerability analyses; emergency evacuation transportation; sheltering arrangements; postdisaster activities, including provisions for emergency power, communications, food, and water; postdisaster transportation; supplies, including drug caches; staffing; emergency equipment; and individual identification of residents, transfer of records, and methods of responding to family inquiries.⁴

The exemptions do not apply to the Governor's certification of sufficiency of a comprehensive emergency management plan addressing a hospital's response to an act of terrorism.⁵

Public Meetings Exemption

Any portion of a public meeting that would reveal confidential and exempt emergency management plans is exempt from public meetings requirements.⁶

¹ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

² Section 395.1056(1), F.S.

³ Section 395.1056(2), F.S.

⁴ Section 395.1056(1) and (2), F.S.

⁵ Section 395.1056(4), F.S.

⁶ Section 395.1056(3), F.S.

Open Government Sunset Review Act

Pursuant to the Open Government Sunset Review Act,⁷ the exemptions will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal dates, thereby reenacting the public records and public meetings exemptions. It reorganizes the section and makes editorial changes.

The bill also removes the provision requiring an agency with authorized access to such plan to maintain the confidential and exempt status of that plan. In *City of Riviera Beach v. Barfield*,⁸ the court held that "when a criminal justice agency transfers exempt criminal investigative information to another criminal justice agency, the information retains its exempt status."⁹ As such, the provision is unnecessary and has been removed.

C. SECTION DIRECTORY:

Section 1 amends s. 395.1056, F.S., to remove the repeal dates.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state and local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review

⁷ Section 119.15, F.S.

⁸ 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995)

⁹ *Government-In-The-Sunshine Manual 2005 Edition*, prepared by the Office of the Attorney General and the First Amendment Foundation, vol. 27, at 118.

process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state and local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding comprehensive emergency
management plans; amending s. 395.1056, F.S.; making
editorial changes; reorganizing the section; deleting
provisions providing for the repeal of the exemptions
under the Open Government Sunset Review Act; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1), (2) and (3) of section
395.1056, Florida Statutes, are amended to read:

395.1056 Plan components addressing a hospital's response
to terrorism; public records exemption; public meetings
exemption.--

(1)(a) Those portions of a comprehensive emergency
management plan that ~~which~~ address the response of a public or
private hospital to an act of terrorism as defined by s. 775.30
~~and which are held by filed with or are in the possession of the~~
agency, a state or local law enforcement agency, a county or
municipal emergency management agency, the Executive Office of
the Governor, the Department of Health, or the Department of
Community Affairs are confidential and exempt from ~~the provisions~~
~~of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~
~~This exemption is remedial in nature, and it is the intent of the~~
~~Legislature that this exemption be applied to plans filed with~~
~~the agency before, on, or after the effective date of this~~
~~section.~~

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(b) Information made confidential and exempt by this subsection may be disclosed by a custodial agency to another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts,~~and the confidential and exempt status of such information shall be retained while in the possession of the receiving agency.~~

(c) Portions of a comprehensive emergency management plan that~~which~~ address the response of a public or private hospital to an act of terrorism include those portions addressing:

1. Security systems or plans;
2. Vulnerability analyses;
3. Emergency evacuation transportation;
4. Sheltering arrangements;
5. Postdisaster activities, including provisions for emergency power, communications, food, and water;
6. Postdisaster transportation;
7. Supplies, including drug caches;
8. Staffing;
9. Emergency equipment; and
10. Individual identification of residents, transfer of records, and methods of responding to family inquiries. ~~This subsection is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(2) Those portions of a comprehensive emergency management plan that~~which~~ address the response of a public hospital to an

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act of terrorism as defined by s. 775.30 ~~and which are held by in~~
~~the custody of~~ that public hospital are exempt from the
~~requirements of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 Constitution. Portions of a comprehensive emergency management
 plan ~~that~~ which address the response of a public hospital to an
 act of terrorism include those portions addressing:

- (a) Security systems or plans;
- (b) Vulnerability analyses;
- (c) Emergency evacuation transportation;
- (d) Sheltering arrangements;
- (e) Postdisaster activities, including provisions for
 emergency power, communications, food, and water;
- (f) Postdisaster transportation;
- (g) Supplies, including drug caches;
- (h) Staffing;
- (i) Emergency equipment; and
- (j) Individual identification of residents, transfer of
 records, and methods of responding to family inquiries. ~~This~~
~~subsection is subject to the Open Government Sunset Review Act of~~
~~1995 in accordance with s. 119.15 and shall stand repealed~~
~~October 2, 2006, unless reviewed and saved from repeal through~~
~~reenactment by the Legislature.~~

(3) The public records exemptions provided by this section
are remedial in nature, and it is the intent of the Legislature
that the exemptions apply to plans held by a custodial agency
before, on, or after the effective date of this section.

(4) That ~~Any~~ portion of a public meeting which would reveal
 information contained in a comprehensive emergency management
 plan ~~that~~ which addresses the response of a hospital to an act of

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88 | terrorism is exempt from ~~the provisions of s. 286.011 and s.~~
 89 | 24(b), Art. I of the State Constitution. ~~This subsection is~~
 90 | ~~subject to the Open Government Sunset Review Act of 1995 in~~
 91 | ~~accordance with s. 119.15 and shall stand repealed October 2,~~
 92 | ~~2006, unless reviewed and saved from repeal through reenactment~~
 93 | ~~by the Legislature.~~

94 | (5)~~(4)~~ The certification by the Governor, in coordination
 95 | with the Department of Health, of the sufficiency of a
 96 | comprehensive emergency management plan that addresses the
 97 | response of a hospital to an act of terrorism is not exempt.

98 | Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-13 OGSR Long-term Care Facilities
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>Haw</i>	Williamson <i>Haw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records and public meetings exemption regarding incident reports reported by a nursing home or assisted living facility. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

In 2001, the Legislature required nursing homes to implement an internal risk management and quality assurance program to investigate and analyze the frequency and cause of specific types of adverse incidents.¹ The Legislature also authorized assisted living facilities to voluntarily establish a risk management and quality assurance program.² Both are required to report adverse incidents to the Agency for Health Care Administration (AHCA).³

For purposes of reporting to AHCA, the term “adverse incident” means:

- An event over which facility personnel could exercise control and that is associated in whole or in part with the facility’s intervention, and that results in:
 - Death;
 - Brain or spinal injury;
 - Permanent disfigurement;
 - Fracture or dislocation of bones or joints;
 - A limitation of neurological, physical, or sensory function;⁴
 - A condition that required medical attention to which the resident has not given his or her informed consent; or
 - Any condition that requires the transfer of the resident to a unit providing a more acute level of care due to the adverse incident;
- Abuse, neglect, or exploitation as defined in s. 415.102, F.S.;
- Abuse, neglect and harm as defined in s. 39.01, F.S.;⁵
- Resident elopement; or
- Events reported to law enforcement.⁶

Current law provides a public records and public meetings exemption with regards to incident reports.⁷ Incident reports filed with a facility’s risk manager and administrator, notifications of the occurrence of an adverse incident, and adverse incident reports are confidential and exempt⁸ from public records

¹ Every nursing home must establish an internal risk management and quality assurance program to assess resident care practices; review facility quality indicators, facility incident reports, deficiencies cited by the Agency for Health Care Administration (AHCA), and resident grievances; and develop plans of action to correct and quickly respond to identified quality deficiencies. The nursing home administrator is responsible for the program. Subsections (1) and (2) of section 400.147, F.S.

² The purpose of the program is to assess resident care practices, facility incident reports, deficiencies cited by AHCA, adverse incident reports, and resident grievances. Section 400.423(1), F.S.

³ Sections 400.147(7), 400.147(8), 400.423(3), and 400.423(4), F.S.

⁴ This provision is not included in the definition of adverse incident for purposes of assisted living facility reporting.

⁵ This provision is not included in the definition of adverse incident for purposes of assisted living facility reporting.

⁶ Sections 400.147(5) and 400.423(2), F.S.

⁷ Section 400.119, F.S.

⁸ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

requirements. Confidential and exempt records are available to a regulatory board for purposes of disciplinary action⁹ and to a law enforcement agency if criminal activity is suspected.¹⁰

Meetings of an internal risk management and quality assurance committee of a nursing home or assisted living facility are exempt from public meetings requirements.¹¹ Records of the exempt meetings are confidential and exempt from public records requirements.¹²

Pursuant to the Open Government Sunset Review Act,¹³ the exemptions will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records and public meetings exemption. It makes editorial changes and reorganizes the section.

C. SECTION DIRECTORY:

Section 1 amends s. 400.119, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state expenditures, as well as nursing homes and assisted living facilities. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees

⁹ Confidential and exempt records obtained by a regulatory board are not available to the public as part of the record of investigation and prosecution in a disciplinary proceeding; however, upon request, such records are available to the health care professional against whom probable cause has been found. Section 400.119(2), F.S.

¹⁰ The law enforcement agency must maintain the confidential and exempt status of the records until criminal charges are filed. Section 400.119(3), F.S.

¹¹ Section 400.119(4), F.S.

¹² Section 400.119(1), F.S.

¹³ Section 119.15, F.S.

responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government, as well as nursing homes and assisted living facilities, may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

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A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding long-term care facilities;
reorganizing the section; making editorial changes;
deleting the provision that provides for the repeal of the
exemptions under the Open Government Sunset Review Act;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 400.119, Florida Statutes, is amended to
read:

400.119 Confidentiality of records and meetings of risk
management and quality assurance committees.--

~~(1) Records of meetings of the risk management and quality
assurance committee of a long-term care facility licensed under
this part or part III of this chapter, as well as Incident
reports filed with the facility's risk manager and administrator
of a long-term care facility licensed under this part or part III
of this chapter, notifications of the occurrence of an adverse
incident, and adverse incident reports from the facility are
confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of
the State Constitution.~~

(2)(a) The meetings of an internal risk management and
quality assurance committee of a long-term care facility licensed
under this part or part III of this chapter are exempt from s.
286.011 and s. 24(b), Art. I of the State Constitution.

(b) Records of those meetings are confidential and exempt
from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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(3)(a) ~~However,~~ If the Agency for Health Care Administration has a reasonable belief that conduct by a staff member or employee of a facility is criminal activity or grounds for disciplinary action by a regulatory board, the agency may disclose ~~such records~~ made confidential and exempt pursuant to this section to the appropriate law enforcement agency or regulatory board.

(b) Records disclosed to a law enforcement agency remain confidential and exempt until criminal charges are filed.

~~(4)(2)~~ Records made ~~that are~~ confidential and exempt under this section ~~subsection (1)~~ and that are obtained by a regulatory board are not available to the public as part of the record of investigation and prosecution in a disciplinary proceeding made available to the public by the agency or the appropriate regulatory board. However, the agency or the appropriate regulatory board shall make available, upon request by a health care professional against whom probable cause has been found, any such records that form the basis of the determination of probable cause.

~~(3) Records disclosed to a law enforcement agency pursuant to subsection (1) remain confidential and exempt until criminal charges are filed.~~

~~(4) The meetings of an internal risk management and quality assurance committee of a long-term care facility licensed under this part or part III of this chapter are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution and are not open to the public.~~

~~(5) This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand~~

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59 | ~~repealed on October 2, 2006, unless reviewed and saved from~~
 60 | ~~repeal through reenactment by the Legislature.~~

61 | Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-14 OGSR Total Maximum Daily Loads
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SPB 7012

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>haw</i>	Williamson <i>haw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Watershed Restoration Act and Total Maximum Daily Loads

The federal Water Pollution Control Act of 1972, commonly referred to as the Clean Water Act (CWA), established the basic framework for pollution control in the nation's water bodies. Its primary goal was to have the nation's water bodies clean and useful. By setting national standards and regulations for the discharge of pollution, the intent of the CWA was to restore and protect the health of the nation's water bodies.¹

Section 305(b) of the CWA requires states to submit to Congress a biennial report on the water quality of their lakes, streams, and rivers. A partial list of water bodies that qualify as "impaired" (i.e., do not meet specific pollutant limits for their designated uses) must be submitted to the U.S. Environmental Protection Agency under section 303(d) of the CWA. States are required to develop total maximum daily loads (TMDL) for each pollutant that exceeds the legal limits for that water body. Section 303(d) and the development of TMDLs generally were ignored by the states until environmental groups began filing lawsuits.²

In 1999, the Florida Legislature passed the Florida Watershed Restoration Act (WRA), which codified the establishment of TMDLs for pollutants of water bodies.³ The WRA requires the Department of Environmental Protection (DEP) to promulgate rules relating to the methodology for assessing, calculating, allocating, and implementing the TMDL process.⁴ The WRA also directs that the TMDL process be integrated with existing protection and restoration programs, and coordinated with all state agencies and affected parties.⁵

TMDLs describe the amount of each pollutant a water body can receive without violating state water quality standards.⁶ TMDLs are the sum of waste load allocations, load allocations, and a margin of safety to account for uncertain conditions. Waste load allocations are pollutant loads attributable to existing and future point sources, such as discharges from industry and sewage facilities. Load allocations are pollutant loads attributable to existing and future nonpoint sources such as the runoff from farms, forests, and urban areas. Even though an individual discharge into a water body may meet established standards, the cumulative and multiplier effect of discharges from numerous sources can cause a water body not to meet the quality standards.⁷

DEP may develop a basin management action plan (BMAP) as part of the development and implementation of a TMDL for a water body.⁸ The plan must:

¹ See *House of Representatives Staff Analysis HB 1839 CS* by the State Resources Council, April 25, 2005, at 2.

² *Id.*

³ Chapter 99-223, Laws of Florida; s. 403.067, F.S.

⁴ Section 403.067(3)(b), F.S.

⁵ Subsections (1) and (3) of section 403.067, F.S.

⁶ Section 403.067(6)(a), F.S.

⁷ See *House of Representatives Staff Analysis HB 1839 CS* by the State Resources Council, April 25, 2005, at 2.

⁸ Section 403.067(7)(a)1., F.S.

- Integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL;
- Restore designated uses of the water body;
- Provide for phased implementation of strategies;
- Establish a schedule for implementing strategies;
- Establish a basis for evaluating the plan's effectiveness;
- Identify feasible funding strategies; and
- Equitably allocate pollutant reductions to basins as a whole or to each point or nonpoint source.⁹

The BMAP also must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is achieved over time.¹⁰ Progress assessments are required every five years and revisions to the plan are required, as appropriate.¹¹

Public Records Exemption

Current law provides a public records exemption for certain agricultural records. Individual agricultural records relating to processes or methods of production, or relating to costs of production, profits, or other financial information that are reported to the Department of Agriculture and Consumer Services as part of best management practices for reducing water pollution are confidential and exempt¹² from public records requirements.¹³ Upon request, the department may release the confidential and exempt records to DEP or any water management district.

Pursuant to the Open Government Sunset Review Act,¹⁴ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes.

The bill removes the provision requiring DEP or any water management district to maintain the confidential and exempt status of such records. In *City of Riviera Beach v. Barfield*,¹⁵ the court held that "when a criminal justice agency transfers exempt criminal investigative information to another criminal justice agency, the information retains its exempt status."¹⁶ As such, the provision is unnecessary and has been removed.

C. SECTION DIRECTORY:

Section 1 amends s. 403.067(7), F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an effective date of October 1, 2006.

⁹ *Id.*

¹⁰ Section 403.067(7)(a)5., F.S.

¹¹ *Id.*

¹² There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹³ Section 403.067(7)(c)5., F.S.

¹⁴ Section 119.15, F.S.

¹⁵ 642 So. 2d 1135 (Fla. 4th DCA 1994), review denied, 651 So. 2d 1192 (Fla. 1995)

¹⁶ *Government-In-The-Sunshine Manual 2005 Edition*, prepared by the Office of the Attorney General and the First Amendment Foundation, vol. 27, at 118.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of

the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding total maximum daily loads;
4 amending s. 403.067, F.S.; making editorial changes;
5 removing superfluous language; deleting the provision that
6 provides for the repeal of the exemption under the Open
7 Government Sunset Review Act; providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Paragraph (c) of subsection (7) of section
12 403.067, Florida Statutes, is amended to read:

13 403.067 Establishment and implementation of total maximum
14 daily loads.--

15 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
16 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

17 (c) Best management practices.--

18 1. The department, in cooperation with the water management
19 districts and other interested parties, as appropriate, may
20 develop suitable interim measures, best management practices, or
21 other measures necessary to achieve the level of pollution
22 reduction established by the department for nonagricultural
23 nonpoint pollutant sources in allocations developed pursuant to
24 subsection (6) and this subsection. These practices and measures
25 may be adopted by rule by the department and the water management
26 districts pursuant to ss. 120.536(1) and 120.54, and, where
27 adopted by rule, shall be implemented by those parties
28 responsible for nonagricultural nonpoint source pollution.

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2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be implemented by those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules shall also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including recordkeeping requirements.

3. Where interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection shall be verified at representative sites by the department. The department shall use best professional judgment in making the initial verification that the best management practices are effective and, where applicable, shall notify the appropriate water management district and the Department of Agriculture and Consumer Services

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of its initial verification prior to the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from the provisions of s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants.

4. Where water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures according to rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. Should the reevaluation determine that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. ~~Individual~~ Agricultural records relating to processes or methods of production, ~~or relating to costs of production,~~ profits, or other financial information held by ~~which are~~ otherwise not public records, ~~which are reported to the~~

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87 | Department of Agriculture and Consumer Services pursuant to
 88 | subparagraphs 3. and 4. or pursuant to any rule adopted pursuant
 89 | to subparagraph 2. are ~~shall be~~ confidential and exempt from s.
 90 | 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon
 91 | request, records made confidential and exempt pursuant to this
 92 | subparagraph shall be released to ~~of the~~ department or any water
 93 | management district, ~~the Department of Agriculture and Consumer~~
 94 | ~~Services shall make such individual agricultural records~~
 95 | ~~available to that agency, provided that the confidentiality~~
 96 | ~~specified by this subparagraph for such records is maintained.~~
 97 | ~~This subparagraph is subject to the Open Government Sunset Review~~
 98 | ~~Act of 1995 in accordance with s. 119.15, and shall stand~~
 99 | ~~repealed on October 2, 2006, unless reviewed and saved from~~
 100 | ~~repeal through reenactment by the Legislature.~~

101 | 6. The provisions of subparagraphs 1. and 2. shall not
 102 | preclude the department or water management district from
 103 | requiring compliance with water quality standards or with current
 104 | best management practice requirements set forth in any applicable
 105 | regulatory program authorized by law for the purpose of
 106 | protecting water quality. Additionally, subparagraphs 1. and 2.
 107 | are applicable only to the extent that they do not conflict with
 108 | any rules adopted by the department that are necessary to
 109 | maintain a federally delegated or approved program.

110 | Section 2. This act shall take effect October 1, 2006.